IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO: 7450 of 2004

Between:

K.S.D Duttu Raju, S/o. Late Venkata Suryanarayana Raju
R/o. Bunglow No.5 Harbour Park, Visakhapatnam Working as

Docks Manager, Visakhapatnam Port Trust, Visakhapatnam.

... PETITIONER

AND

1 Visakhapatnam Port Trust rep by its Chairman Visakhapatnam.
2 Union of India rep., by its Secretary Ministry of Shipping No.1,

Sansad Marg, New Delhi.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any writ order or direction particularly one in the nature of Mandamus or any other appropriate writ declaring the proceedings No.C2/PC/KSDR/2003 Dt: 24-11-2003 and all other consequential proceedings of the 1st respondent as arbitrary, illegal and without jurisdiction and nullify the same.

Counsel for the Petitioner: Mr. N. SUBBA REDDY FOR DR.P.B.VIJAY KUMAR
Counsel for the Respondent No.1: MR.K.SRINIVASA MURTHY
Counsel for the Respondent No.2: Smt. A.P. LAXMI
The Court made the following:

Order:

This writ petition is filed seeking Mandamus declaring Proceedings No.C2/PC/KSDR/2003 Dated 24-11-2003, and all other consequential proceedings of the 1st respondent as arbitrary, illegal and without jurisdiction and to nullify the same.

2. Petitioner, who claims to have joined the first respondent, the Visakhapatnam Port Trust, as Assistant Traffic Manager, states that he was promoted as Deputy Traffic Manager and Docks Manager. It is stated that while he was working as Docks Manager, he was selected and appointed by the second respondent, Ministry of Shipping, as Traffic Manager, Kandla Port Trust, on deputation for tenure of 5 years – from 1996-2001. Thereafter, it is stated, petitioner was repatriated to the first respondent Trust, which Trust, on the vacancy arisen for the post of Traffic Manger, in exercise of its powers conferred under Section 24 (1) (a) of the Major Port Trust Act, 1963, appointed the petitioner as Traffic Manager, vide Letter No.A-12023-23-202-PE-1 dated 19-09-2002.

3. While things stood thus, it is stated that one Sri B. Vijaya Sagar, one of the Docks Managers, approached this Court in W.P.No.19235 of 2002 challenging the selection of the petitioner and the same was dismissed by order dated 24-01-2003. On appeal, the petitioner's appointment was set-aside by the Division Bench of this Court, by an order dated 14-10-2003, in W.A.No.175 of 2003, directing the respondents to place the matter before the appropriate committee for fresh look. It is stated that, aggrieved by the said order, petitioner filed S.L.P. No.2912 of 2004 before the Hon'ble Supreme Court of India and the Supreme Court, by its order dated 16-02-2004, while issuing notice, ordered *status quo* to be maintained.

4. It is the case of the petitioner that the first respondent issued reversion order reducing his rank from Traffic Manager to Docks Manager by the order dated 24-11-2003 making it effective from 14-10-2003; Section 25 of the Major Ports Trust Act provides that no order issued by Chairman involving the reduction in the rank of the Head of Department shall have effect until it is approved by the Central Government. It is stated that the petitioner made a representation to the Chairman, Visakhapatnam Port Trust, stating that the reversion order cannot be issued with retrospective effect since the reversion order was issued only on 24-11-2003,

making it effective from 14-10-2003, to which representation, a reply dated 08-12-2003 was received stating that effect is being given to the orders of this Court, wherein this Court had set-aside the appointment as Traffic Manager.

5. It is the main grievance of the petitioner that the first respondent has no power to issue proceedings of cancellation and that it is only the second respondent that is competent to exercise the said power.

6. Learned counsel for the petitioner contended that the order of reversion dated 24-11-2003 is without jurisdiction; therefore the same is liable to be set aside.

7. The second respondent filed counter affidavit stating that the selection committee met on 20-11-2003 and recommended a panel and Shri B. Vijaya Sagar was No.2 in the panel and it was decided to appoint him to the post of Traffic Manager. It is stated that before orders could be issued, directions of the Hon'ble Supreme Court in S.L.P.No.2912 of 2004, for maintaining *Status quo,* were received. Learned Standing Counsel for the respondent Port contended once the Supreme Court directed the parties to maintain *status quo,* there is no scope or possibility to pass any orders and it would amount to reviewing the orders of the Supreme Court. He further contended that the reversion order has been passed in pursuance of the order passed by this Court in W.A.175 of 2003 and till alternative arrangement is made, petitioner was asked to continue in the said post and therefore on the same date of reversion, another proceedings have been issued. In the meanwhile, *status quo* order has been received and hence the petitioner is continuing in the said post.

8. Heard the counsel on either side.

9. The short question that falls for consideration is whether the order of reversion dated 24-11-2003 issued by the Chairman of the first respondent Trust is without jurisdiction. It is not in dispute that the Chairman is not the competent person to revert the petitioner from the post of Traffic Manager to that of Docks Manager. Only the Government is the competent authority to revert the petitioner. In the normal course, there would not be any difficulty in setting aside the order of reversion passed by an incompetent person. In this Case, petitioner was selected and appointed as Assistant Traffic Manager and one Mr. B. Vijaya Sagar, one of the Docks Managers, filed W.P. No. 19235 of 2002 challenging the selection of the petitioner. The said writ petition was dismissed on 24-0-2003 and on appeal and the appointment of the petitioner was set-aside by the Division Bench of this Court by its

order dated 14-10-2003 in W.A.No.175 of 2003, directing the respondent to place the matter before the appropriate committee for fresh look. Aggrieved by the same, petitioner filed S.L.P.No.2912 of 2004 before the Supreme Court and the Supreme Court, by its order dated 16-02-2004, passed interim order, which reads as follows:

> "the status quo as obtaining between the parties herein on this the 16th day of February, 2004 with regard to the subject matter which was in dispute before the High Court of Judicature, Andhra Pradesh at Hyderabad in Writ Appeal No. 175 of 2003 shall be maintained."

10. The subject matter is with regard to the selection of the petitioner as Traffic Manager. If the petitioner is aggrieved by the competency of the person who passed the reversion order dated
24-11-2003, reverting him from the post of Traffic Manager to that of Docks Manager, he should have brought the same to the notice of the Hon'ble Supreme Court while passing the interim order. So, any order that may be passed by this Court is virtually reviewing the order of the Hon'ble Supreme Court, which cannot be done. Even though the order passed by the authority reverting the petitioner, lacks jurisdiction, in view of the fact that the subject matter is pending before the Supreme Court, the petitioner should inevitably approach the Supreme Court. Therefore, I am of the view that since the subject matter of the dispute is pending before the Supreme Court, this Court cannot grant the relief sought by the petitioner.

11. The writ petition is devoid of merits and is accordingly dismissed. No order as to costs.

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JUSTICE K.C. BHANU

July 21, 2005

MRR

Assistant Registrar

// True copy //

Section Officer

Copy to. –

1 The Chairman, Visakhapatnam Port Trust, Visakhapatnam.
2 The Secretary, Ministry of Shipping, Union of India, No.1,

Sansad Marg, New Delhi.

Two C.D. Copies.